

Assembly Bill No. 2327

Passed the Assembly August 27, 2012

Chief Clerk of the Assembly

Passed the Senate August 22, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 12591.1 and 12599.6 of, and to add Section 12599.8 to, the Government Code, relating to charitable organizations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2327, Feuer. Charitable organizations: enforcement.

(1) Under existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act governs charitable corporations, unincorporated associations trustees, commercial fundraisers, fundraising counsel, commercial coventurers, and other legal entities who hold or solicit property for charitable purposes over which the Attorney General has enforcement and supervisory powers. The act requires that any person who violates any provision of the act with the intent to deceive or defraud be liable for a specified civil penalty. The act also requires that any person who violates any provision of the act, regardless of intent, is liable for a specified civil penalty.

This bill would revise those enforcement provisions to instead provide that the Attorney General may issue a cease and desist order whenever the Attorney General finds that any person or entity that the act applies to has committed an act that would constitute a violation of, or is operating in violation of, any provision of the act. The bill would authorize the Attorney General to impose a specified penalty on any person or entity for each act or omission that constitutes a violation of the act, subject to certain procedures. The bill would also authorize the Attorney General, if the Attorney General had assessed a penalty against a person or entity pursuant to these provisions, to suspend the registration of that person or entity in accordance with certain procedures. The bill would authorize a person or entity that the Attorney General has filed an action against pursuant to the act to request a hearing to review that action in accordance with certain procedures. The bill would authorize the Attorney General to seek injunctive relief to enforce the provisions of this act.

(2) Existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act, prohibits charitable organizations, as

defined, and commercial fundraisers for charitable purposes from misrepresenting the purpose of the charitable organization or the nature, purpose, or beneficiary of a solicitation. The act further prohibits specified practices in the planning, conduct, or execution of any solicitation or charitable sales promotion, including, among others, operating in violation of, or failing to comply with, any of the requirements of the act or orders of the Attorney General.

This bill would prohibit any person from knowingly submitting for filing on behalf of any charitable organization any statement, report, financial statement, attachment, or other information to be filed with the Attorney General that contains information, a statement, or an omission that is false or misleading.

(3) Existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act, requires charitable organizations to file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation, unincorporated association, or trustee, in accordance with rules and regulations of the Attorney General.

This bill would require a charitable organization, in any year that the balance sheet of that charitable organization shows that it holds restricted net assets, while reporting negative unrestricted net assets, to provide an explanation of its compliance with its charitable trust responsibilities and proof of directors' and officers' liability insurance coverage to the Attorney General's Registry of Charitable Trusts.

The people of the State of California do enact as follows:

SECTION 1. Section 12591.1 of the Government Code is amended to read:

12591.1. (a) Any person who violates any provision of this article with intent to deceive or defraud any charity or individual is liable for a civil penalty not exceeding ten thousand dollars (\$10,000).

(b) The Attorney General may issue a cease and desist order whenever the Attorney General finds that any entity or person that is subject to the provisions of this article pursuant to Section 12581, or its agent, servant, or employee, has committed an act that would constitute a violation of, or is operating in violation of, this article,

or its implementing regulations, or an order issued by the Attorney General, including, but not limited to, all of the following:

(1) Has refused or failed, after notice, to produce any records of the organization or to disclose any information required to be disclosed under this article or Chapter 4 (commencing with Section 300) of Division 1 of Title 11 of the California Code of Regulations.

(2) Has made a material false statement in an application, statement, or report required to be filed under this article or Chapter 4 (commencing with Section 300) of Division 1 of Title 11 of the California Code of Regulations.

(3) Has failed to file a financial report, or has filed an incomplete financial report, that is required by this article or Chapter 4 (commencing with Section 300) of Division 1 of Title 11 of the California Code of Regulations.

(4) Has engaged in any act prohibited pursuant to Section 12599.6.

(c) The Attorney General may impose a penalty on any person or entity, not to exceed one thousand dollars (\$1,000) per act or omission, for each act or omission that constitutes a violation of this article or Chapter 4 (commencing with Section 300) of Division 1 of Title 11 of the California Code of Regulations. At least five days prior to imposing that penalty, the Attorney General shall provide notice to the person or entity that committed the violation by certified mail to the address of record at the Registry of Charitable Trusts. Penalties shall accrue, commencing on the fifth day after notice is given, at a rate of one hundred dollars (\$100) per day for each day until that person or entity corrects that violation. Penalties shall stop accruing as of the date set forth in the written notice provided by the Attorney General that the violation or omission subject to penalties has been corrected or remedied.

(d) If the Attorney General assesses penalties under this section, the Attorney General may suspend the registration of that person or entity in accordance with the procedures set forth in Section 999.6 of Title 11 of the California Code of Regulations. Registration shall be automatically suspended until the fine is paid and no registration shall be renewed until the fine is paid.

(e) Any person or entity that the Attorney General has filed an action against pursuant to this section may request a hearing to

review that action in accordance with the procedures set forth in Chapter 15 (commencing with Section 999.1) of Division 1 of Title 11 of the California Code of Regulations and rules adopted by the Attorney General. Any request for hearing shall be made within 30 days after the Attorney General has served the person with notice of the action. That notice shall be deemed effective upon mailing.

(f) The Attorney General may apply to a superior court of the State of California for relief, and the court may issue a temporary injunction or a permanent injunction to restrain violations of this chapter, appoint a receiver, order restitution or an accounting, or grant other relief as may be appropriate to ensure the due application of charitable funds. Those proceedings shall be brought in the name of the state.

(g) All penalties paid to the Attorney General pursuant to this section shall be used by the Department of Justice in accordance with the provisions of Section 12586.2.

(h) Any offense committed under this article involving a solicitation may be deemed to have been committed at either the place at which the solicitation was initiated or at the place where the solicitation was received.

(i) Any person who violates only subdivision (c), (d), (e), or (f) of Section 12586.1 shall not be liable for a civil penalty under subdivision (b) if the person (1) has not received reasonable notice of the violation and (2) has not been given a reasonable opportunity to correct the violation. The Attorney General shall notify in writing a person who violates only subdivision (c), (d), (e), or (f) of Section 12586.1 that he or she has 30 days to correct the violation.

(j) The recovery of a civil penalty pursuant to this section precludes assessment of a late fee pursuant to Section 12586.1 for the same offense.

SEC. 2. Section 12599.6 of the Government Code is amended to read:

12599.6. (a) Charitable organizations and commercial fundraisers for charitable purposes shall not misrepresent the purpose of the charitable organization or the nature or purpose or beneficiary of a solicitation. A misrepresentation may be accomplished by words or conduct or failure to disclose a material fact.

(b) A charitable organization must establish and exercise control over its fundraising activities conducted for its benefit, including approval of all written contracts and agreements, and must ensure that fundraising activities are conducted without coercion.

(c) A charitable organization shall not enter into any contract or agreement with, or employ, any commercial fundraiser for charitable purposes or fundraising counsel for charitable purposes unless that commercial fundraiser or fundraising counsel is registered with the Attorney General's Registry of Charitable Trusts or, if not registered, agrees to register prior to the commencement of any solicitation.

(d) A charitable organization shall not enter into any contract or agreement with, or raise any funds for, any charitable organization required to be registered pursuant to this act unless that charitable organization is registered with the Attorney General's Registry of Charitable Trusts or, if not registered, agrees to register prior to the commencement of the solicitation.

(e) Each contribution in the control or custody of a commercial fundraiser for charitable purposes shall in its entirety and within five working days of receipt (1) be deposited in an account at a bank or other federally insured financial institution that is solely in the name of the charitable organization on whose behalf the contribution was solicited and over which the charitable organization has sole control of withdrawals or, (2) be delivered to the charitable organization in person, by Express Mail, or by another method of delivery providing for overnight delivery.

(f) Regardless of injury, the following acts and practices are prohibited in the planning, conduct, or execution of any solicitation or charitable sales promotion:

(1) Operating in violation of, or failing to comply with, any of the requirements of this act or regulations or orders of the Attorney General, or soliciting contributions after registration with the Attorney General's Registry of Charitable Trusts has expired or has been suspended or revoked.

(2) Using any unfair or deceptive acts or practices or engaging in any fraudulent conduct that creates a likelihood of confusion or misunderstanding.

(3) Using any name, symbol, emblem, statement, or other material stating, suggesting, or implying to a reasonable person

that the contribution is to or for the benefit of a particular charitable organization when that is not the fact.

(4) Misrepresenting or misleading anyone in any manner to believe that the person on whose behalf a solicitation or charitable sales promotion is being conducted is a charitable organization or that the proceeds of the solicitation or charitable sales promotion will be used for charitable purposes when that is not the fact.

(5) Misrepresenting or misleading anyone in any manner to believe that any other person sponsors, endorses, or approves a charitable solicitation or charitable sales promotion when that person has not given consent in writing to the use of the person's name for these purposes.

(6) Misrepresenting or misleading anyone in any manner to believe that goods or services have endorsement, sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has endorsement, sponsorship, approval, status, or affiliation that the person does not have.

(7) Using or exploiting the fact of registration with the Attorney General's Registry of Charitable Trusts so as to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the Attorney General. The use of the following statement is not prohibited:

"The official registration and financial information regarding (insert the legal name of the charity as registered with the Registry of Charitable Trusts) can be obtained from the Attorney General's Web site at <http://caag.state.ca.us/charities/>. Registration does not imply endorsement."

(8) Representing directly or by implication that a charitable organization will receive an amount greater than the actual net proceeds reasonably estimated to be retained by the charity for its use.

(9) With respect to solicitations by commercial fundraisers for charitable purposes on behalf of law enforcement personnel, firefighters, or other persons who protect the public safety, issuing, offering, giving, delivering, or distributing any honorary membership cards, courtesy cards, or similar cards, or any stickers, emblems, plates, or other items that could be used for display on

a motor vehicle, and that suggest affiliation with, or endorsement by any public safety personnel or a group comprising such personnel.

(10) (A) Soliciting for advertising to appear in a for-profit publication that relates to, purports to relate to, or that could reasonably be construed to relate to, any charitable purpose without making the following disclosures at the time of solicitation:

- (i) The publication is a for-profit, commercial enterprise.
- (ii) The true name of the solicitor and the fact that the solicitor is a professional solicitor.
- (iii) The publication is not affiliated with or sponsored by any charitable organization.

(B) Where a sale of advertising has been made, the solicitor, prior to accepting any money for the sale, shall make to the purchaser the disclosures required by subparagraph (A) in written form and in conspicuous type.

(11) Representing that any part of the contributions solicited by a charitable organization will be given or donated to any other charitable organization unless that organization has consented in writing to the use of its name prior to the solicitation. The written consent shall be signed by one authorized officer, director, or trustee of the charitable organization.

(12) Representing that tickets to events will be donated for use by another, unless all of the following requirements have been met:

(A) The charitable organization or commercial fundraiser has commitments, in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept.

(B) The donated tickets will not, when combined with other ticket donations, exceed either of the following:

(i) The number of ticket commitments the charitable organization or commercial fundraiser has received from charitable organizations.

(ii) The total attendance capacity of the site of the event.

(g) A person shall not knowingly submit for filing on behalf of any charitable organization any statement, report, financial statement, attachment, or other information to be filed with the Attorney General that contains information, a statement, or an omission that is false or misleading.

(h) A ticket commitment from a charitable organization alone, as described in clause (i) of subparagraph (B) of paragraph (12) of subdivision (f), does not constitute written consent to use of the organization's name in the solicitation campaign.

SEC. 3. Section 12599.8 is added to the Government Code, to read:

12599.8. For any year that the balance sheet of a charitable organization shows that it holds restricted net assets, while reporting negative unrestricted net assets, the organization shall provide an explanation of its compliance with its charitable trust responsibilities and proof of directors' and officers' liability insurance coverage to the Attorney General's Registry of Charitable Trusts.

Approved _____, 2012

Governor